Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

MARK STEVEN CAMBIANO,

Petitioner,

v.

STARK LIGON, Executive Director of the Arkansas Supreme Court Committee on Professional Conduct,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Arkansas' per se rule forbidding a suspended lawyer from having any contact with a lawyer or law office, even if uncompensated and involving no contact with the public, is overbroad and violates First Amendment rights of free speech and association.

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OPINIONS BELOW

This case is cited below as *Cambiaro v. Neal*, 343 Ark. 691, __ S.W.3d __ 2000 WL 1868260 (2000). The original opinion was issued on November 16, 2000. Upon petition for rehearing, that opinion was withdrawn and a substituted opinion issued on December 15, 2000 (Appendix A). The unreported decision of the Conway County Circuit Court, dated January 3, 2000, is set forth as Appendix B.

JURISDICTIONAL STATEMENT

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The original opinion of the Supreme Court of Arkansas was issued on November 16, 2000, but in response to a petition for rehearing, that opinion was withdrawn and a substituted opinion issued on December 15, 2000.

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

First Amendment, United States Constitution:

> Congress shall make no law . . . abridging freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment, United States Constitution:

> . . . nor shall any state deprive any person of life, liberty or property without due process of law.

Section 7G of the Procedures of the Arkansas Supreme Court regulating Professional Conduct of Attorneys at Law:

> G. Contempt. The following shall be regarded as contempt of the Arkansas Supreme Court:
>
> > (1) Willful disobedience of any Committee order, summons or subpoena;
> >
> > (2) The refusal to testify on matters not privileged by law;
> >
> > (3) Knowingly to testify falsely before the Committee;
> >
> > (4) Engaging in the practice of law during a period of suspension;
> >
> > (5) Engaging in the practice of law after a disbarment or surrender of license; or,
> >
> > (6) Violation of these Procedures by any person.

Section 7J(2) of the Procedures of the Arkansas Supreme Court regulating Professional Conduct of Attorneys at Law:

> J. Employment of Certain Disciplined Attorneys.
>
> > (2) While on suspension or inactive status, an attorney shall not be employed in any capacity whatsoever with a lawyer, law firm or lawyer professional

> association. Employment is construed as the provision of any services or labor for the benefit of the law practice of the employing lawyer or lawyers, whether compensated or not, and irrespective of the location where the services or labor may be performed.

STATEMENT OF THE CASE

Mark Cambiano is an Arkansas lawyer who entered a plea of guilty to a federal felony charge of Aiding and Abetting the Filing of a False Currency Transaction Report. The Arkansas Supreme Court Committee on Professional Conduct entered an interim suspension of his right to practice law. The Committee then filed a disbarment complaint against Cambiano in Conway County (Arkansas) Circuit Court.

Cambiano filed a permissive counterclaim seeking injunctive relief under 42 U.S.C. § 1983 and Ark. Code Ann. § 16-23-101, *et seq.* (the Arkansas Civil Rights Act) and also seeking declaratory judgment for the proposition that Section 7J of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law violates federal and state constitutional rights of free speech and association, due process of law and equal protection of the laws by placing extreme restrictions on suspended lawyers and vague restrictions on disbarred lawyers.

Relevant to this petition for certiorari, Cambiano argued that the prohibition on a suspended lawyer having any contact with a law office is overbroad and invades one's rights of core political speech. He also argued that Section 7J is vague

and violates rights of equal protection of the laws. The Committee sought summary judgment on dismissal of the counterclaim. The dismissal was granted. The circuit judge signed an order under Rule 54 of the Arkansas Rules of Civil Procedure permitting separate appeal of this issue. In *Cambiano v. Neal*, 343 Ark. 691, __ S.W.3d __ 2000 WL 1868260 (2000), the Arkansas Supreme Court upheld the Procedures against all of Cambiano's challenges.

[James A. Neal no longer is the Executive Director of the Committee on Professional Conduct. He has been replaced by Stark Ligon]

The circuit court has subsequently ordered Cambiano to be disbarred. That decision is currently on appeal to the Arkansas Supreme Court.

REASONS FOR GRANTING THE WRIT AND ARGUMENT

ARKANSAS' *PER SE* RULE FORBIDDING A SUSPENDED LAWYER FROM HAVING ANY CONTACT WITH A LAWYER OR LAW OFFICE, EVEN IF UNCOMPENSATED AND INVOLVING NO CONTACT WITH THE PUBLIC, IS OVERBROAD AND VIOLATES FIRST AMENDMENT RIGHTS OF FREE SPEECH AND ASSOCIATION.

This case provides this Court with an opportunity to delineate the proper scope of a State's power to regulate speech and association by lawyers. Cambiano submits that the decision of the Arkansas Supreme Court from which he seeks review by this Court affirms enforcement of a clearly overbroad regulation affecting speech and associational

rights guaranteed by the First and Fourteenth Amendments. Furthermore, it conflicts with this Court's precedents regarding State control of political and commercial speech and lawyers' speech in particular, and improperly extends the doctrine of regulation of commercial speech beyond this Court's precedents.

Cambiano entered a plea of guilty to Aiding and Abetting the Filing of a False Currency Transaction Report. Under Section 6B of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, the Arkansas Supreme Court Committee on Professional Conduct was required to institute disbarment proceedings and to issue an interim suspension of Cambiano's license to practice law pending resolution of the disbarment litigation.

Cambiano counterclaimed in the disbarment action seeking, *inter alia*, declaratory judgment and injunction under 42 U.S.C. § 1983 prohibiting enforcement of provisions of the Procedures restricting the rights of suspended lawyers. The circuit court denied the request and Cambiano appealed. Pursuant to findings under Rule 54 of the Arkansas Rules of Civil Procedure, he was permitted to appeal the dismissal of his counterclaim despite the pendency of the disbarment action. The Arkansas Supreme Court sustained the regulation in *Cambiano v. Neal*, 343 Ark. 691, __ S.W.3d __ 2000 WL 1868260 (2000). This petition for certiorari ensues. [Cambiano asked the Arkansas Supreme Court for a stay of mandate to petition for certiorari, but that request was denied.]

Amendment 28 of the Arkansas Constitution gives the Arkansas Supreme Court the power to regulate the practice of law. In accordance with that mandate, the Supreme Court

has promulgated the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law.

Section 7J of the Procedures provides as follows: The portion relevant to this petition for writ of certiorari is in boldface:

> J. Employment of Certain Disciplined Attorneys.
>
> > (1) When attorneys have been placed on inactive status, suspended, disbarred, or have surrendered their licenses, they are ineligible to practice law within this jurisdiction until readmitted or reinstated.
> >
> > **(2) While on suspension or inactive status, an attorney shall not be employed in any capacity whatsoever with a lawyer, law firm or lawyer professional association. Employment is construed as the provision of any services or labor for the benefit of the law practice of the employing lawyer or lawyers, whether compensated or not, and irrespective of the location where the services or labor may be performed.**

Section 7G(6) of the Procedures provides that "(v)iolation of these Procedures by any person" "shall be regarded as contempt of the Arkansas Supreme Court." Contempt of the Arkansas Supreme Court is a crime in which incarceration is a possible punishment. *See, e.g., Osborne v. Power*, 322 Ark. 229, 908 S.W.2d 340 (1995).

Inter alia, Cambiano challenged the prohibitions on suspended lawyers as being overbroad and violative of First Amendment rights of free speech and association, both facially and as applied. The First Amendment is applicable to the states through the Fourteenth Amendment.

Section 7J, as promulgated and enforced by the Arkansas Supreme Court, prohibits Cambiano from conducting legal research or drafting pleadings on behalf of a lawyer — even though he would have absolutely no contact with the public in doing so and regardless of whether or not he was compensated. Section 7J, both by its terms and as interpreted, thus forbids Cambiano even to express his opinions on legal matters to other lawyers in the most private of circumstances and chills, if not denies, his right of association with other lawyers. It even forbids him to serve as a janitor at a law office. Moreover, a lawyer who was to ask Cambiano to conduct legal research, draft pleadings or do anything else would be in contempt as well as subject to professional discipline.

The Arkansas court cited various cases from this Court sustaining a State's right to regulate the practice of law and to regulate commercial speech, particularly *Ohralik v. Ohio State Bar Assn.*, 436 U.S. 447, 98 S. Ct. 1912 (1978). But a State's right to regulate lawyers is not unfettered, particularly in the area of speech. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S. Ct. 2720 (1991). *Peel v. Attorney Registration and Disciplinary Commission of Illinois*, 496 U.S. 91, 110 S. Ct. 2281 (1990).

The fatal overbreadth problem is that Section 7J goes much further than regulating a suspended lawyer's contacts with the general public. Rather, it bans Cambiano's core

political protected speech and right of association. It forbids him from speaking to another lawyer on a legal issue, even if unpaid and even though he deals with no one other than the lawyer who has asked him for advice. This prohibition not only violates Cambiano's rights, but also those of any lawyer with whom he might otherwise deal.

Cambiano presented to the Arkansas courts this situation: For many years, Cambiano and undersigned counsel were among the few Arkansas lawyers who would do post-conviction work in capital cases. Under Section 7J, if undersigned counsel were to ask Cambiano privately for advice on handling a particular point of death penalty procedure, it would be a crime — contempt of court — for Cambiano to give it and it would be an ethical violation (and criminal contempt as well) for counsel to ask him. This is both a facial and an as-applied violation of the First Amendment. The restrictions are clearly overbroad. Under the overbreadth doctrine, a statute restricting speech is facially invalid in all its applications if it is invalid in any of them. *Gooding v. Wilson*, 405 U.S. 518, 92 S. Ct. 1103 (1972). "In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue." *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 784-785, 98 S. Ct. 1407, 1420 (1978), citing *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 96, 92 S. Ct. 2286, 2290 (1972).

Cambiano's expression of his legal opinions on the issues of the day is core political speech in which First Amendment protection is at its zenith. *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612 (1976). *Meyer v. Grant*, 486 U.S. 414, 108 S. Ct. 1886 (1988).

In *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 115 S. Ct. 1511 (1995), the Supreme Court repudiated the rational basis test for core political speech. Strict scrutiny is the appropriate standard.

> When a law burdens core political speech, we apply "exacting scrutiny," and we uphold the restriction only if it is narrowly tailored to serve an overriding state interest.

514 U.S. at 347, 115 S. Ct. at 1519

There is no overriding state interest in prohibiting a suspended lawyer from private expression of views to a lawyer, when the public is not affected at all and no other category of person is subject to such restriction on his speech and expression.

The Arkansas Supreme Court rejected all of these contentions by characterizing all speech by lawyers (or suspended lawyers) serving in his capacity as a lawyer — no matter the context or the subject matter — is commercial speech and therefore subject to greater regulation by the state, no matter the content or circumstances. To reach this amazing conclusion the Arkansas court relied on this Court's holdings that lawyer *advertising* is regulatable commercial speech and that the State had the power to regulate the practice of law.

That reliance is misplaced. Just because the expressor is a lawyer or suspended lawyer, the government does not have the right to regulate his nonpublic thoughts, expressions and associations. Private conversations are more appropriately analyzed as political speech, not commercial

speech. Even to the extent that this might be regarded as commercial speech, the regulations must be narrowly tailored. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407 (1978). *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 562 (1980). The Arkansas Supreme Court's Procedures are not adequately tailored.

Even regulations aimed at proper governmental concerns can restrict unduly exercise of rights protected by the First Amendment. *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board*, 502 U.S. 105, 112 S. Ct. 501 (1991). The government cannot discriminate by content. *Id.* The Arkansas court's opinion has the effect of permitting content discrimination, by saying that lawyers and suspended lawyers cannot talk, even in private, about certain things. Whether characterized as political or commercial speech, by no means does § 7J present the narrowly tailored restrictions necessary to survive the requisite First Amendment scrutiny.

Although Cambiano currently is in disbarred status, this issue is not moot since his disbarment is on appeal and there is a possibility that the sanction may be reduced to a suspension. Furthermore, this case fits the exceptions to the mootness doctrine as outlined in *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347 (1975): When the challenged action is of too short a duration to be fully litigated prior to its cessation or expiration, and there is a reasonable expectation that the same complaining party will be subject to the same action again.

By its very nature a suspension of license will come to an end. Moreover, it is at least theoretically possible that the circuit court's order of Cambiano's disbarment will be reduced to a suspension.

Therefore, this Court should grant certiorari in order to outline the limits of a State's power to regulate the speech and association rights of lawyers.

CONCLUSION

Wherefore, Cambiano respectfully prays that the Court grant certiorari and, upon plenary briefing and argument, reverse the decision of the Arkansas Supreme Court.

Respectfully submitted,

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APPENDIX

APPENDIX A — DECISION OF THE SUPREME COURT OF ARKANSAS DATED DECEMBER 15, 2000

MARK STEVEN CAMBIANO

v.

JAMES A. NEAL, as Executive Director of the Supreme Court Committee on Professional Conduct.

No. 00-283.

Dec. 15, 2000.

* * *

LAVENSKI R. SMITH, Justice.

This is an attorney discipline case. Appellant Mark Cambiano appeals from an order of the Conway County Circuit Court dismissing his counterclaim. In his counterclaim, Cambiano sought injunctive relief against the interim suspension imposed by the Supreme Court Committee on Professional Conduct pursuant to Section 7J of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at law. Cambiano contended that Section 7J violates both state and federal constitutions. In conjunction with the dismissal, the trial court also certified its order to be final for appeal purposes pursuant to Ark.R.Civ.P. 54(b). We have jurisdiction pursuant to Ark. Sup.Ct. R. 1-2(a)(5) as an appeal involving the discipline of attorneys-at-law and/or arising under the power of the supreme court to regulate the practice of law. The issue before this court is whether Section 7J is constitutional. We hold that it is and accordingly affirm.

Appendix A

Facts

Cambiano received his law license in 1980 and apparently has practiced law in this state since that time. In April of 1997, the federal government indicted Cambiano alleging thirty-one counts of various federal offenses including money laundering and filing a false currency transaction report. Cambiano pled guilty to filing a false currency transaction report and the U.S. Attorney agreed to drop the remaining thirty counts. United States District Court Judge George Howard sentenced Cambiano to three years probation on June 26, 1998. Approximately a month later, the Committee on Professional Conduct ("the Committee") imposed an interim suspension on Cambiano's law license. The Committee suspended Cambiano's law license pursuant to Section 7(E)(3)(a) and (b) and 8B(1)(a) and (b) of the Procedures of the Arkansas Supreme Court Regulating the Professional Conduct of Attorneys at Law ("the Procedures").

In February 1999, the Committee instituted disbarment proceedings in Conway County Circuit Court citing his conviction as well as the illegal conduct alleged in the federal indictment. Cambiano answered the disbarment complaint on February 18, 1999, and counterclaimed on April 22, 1999. Specifically, Cambiano's counterclaim requested injunctive relief and a declaratory judgment that the interim suspension during the pendency of the disbarment proceedings under Section 7J of the Procedures was unconstitutional and that it violates his civil rights. Cambiano's counterclaim sought to have the Rule declared unconstitutional so that he could continue to work for his father, who is also an attorney, while waiting for the disbarment trial. Cambiano argued that the

rule violated his rights to free speech and association, due process of law, and was void for vagueness under the Fourteenth Amendment to the Constitution. The Committee responded on May 10, 1999, with a Motion to Dismiss the Counterclaim under Ark.R.Civ.P. 12(b)(6).

The circuit court held a hearing on November 10, 1999 on the motion. There, Cambiano and his father testified about the type of work he would perform at his father's office should the suspension be lifted. The attorneys for the parties engaged in oral argument about the impact and breadth of the suspension rule, and the trial court ultimately granted the Committee's Motion to Dismiss the Counterclaim. In granting the dismissal, however, the trial court also determined that the order was final and appealable so that Cambiano could pursue this appeal while the underlying disbarment case proceeded. The actual order was filed on January 3, 2000, and Cambiano filed his Notice of Appeal on January 24, 2000.

Standard of Review

On review of a decision of the circuit court in disbarment cases, we review the matter de novo on the record and will not reverse the trial court's findings unless they are clearly erroneous. Neal v. Matthews, 342 Ark. 566, 30 S.W.3d 92 (2000). A finding is clearly erroneous when although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. Neal v. Hollingsworth, 338 Ark. 251, 992 S.W.2d 771 (1999). With respect to interpretation of statutes, however, this court is not bound by the decision of the trial

court as it is for this court to decide what a statute means. Central & Southern Companies, Inc. v. Weiss, 339 Ark. 76, 3 S.W.3d 294 (1999).

Applicable Rules

This appeal involves the Procedures and their application to a suspended attorney. Under Section 2C(1), the Committee has the authority "to investigate all complaints alleging violation of the Model Rules that may be brought to its attention and impose any sanctions deemed appropriate as provided in Section 5 (Procedure) and Section 7 (Sanctions)." Section 7 states in relevant part:

> Section 7. Sanctions.
>
> A. Grounds for Discipline. It shall be grounds for discipline for a lawyer to:
>
> (1) Violate or attempt to violate the Model Rules of Professional Conduct, or any other rules of this jurisdiction regarding professional conduct of lawyers;
>
> * * *
>
> B. Serious Misconduct. Serious misconduct is conduct in violation of the Model Rules that would warrant a sanction terminating or restricting the lawyer's license to practice law. Conduct will be considered serious misconduct if any of the following considerations apply:

Appendix A

(1) The misconduct involves the misappropriation of funds;

(2) The misconduct results in or is likely to result in substantial prejudice to a client or other person;

(3) The misconduct involves dishonesty, deceit, fraud, or misrepresentation by the lawyer;

* * *

(6) The misconduct constitutes a "Serious Crime" as defined in these Procedures.

* * *

D. Types of Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

* * *

(3) INTERIM SUSPENSION: A temporary suspension for an indeterminate period of time of the lawyer's privilege to engage in the practice of law pending the final adjudication of a disciplinary matter.

E. Imposition of Sanctions. When the Committee finds that an attorney has violated any provision of the Model Rules, the Committee is authorized:

* * *

Appendix A

(3) To temporarily suspend the lawyer's privilege to practice law pending final adjudication and disposition of a disciplinary matter. Interim suspension shall be appropriate in the following situations:

(a) Immediately on decision to initiate disbarment;

(b) Immediately upon conviction of a felony notwithstanding pending post-conviction actions;

Central to the issues in this case is Section 7J detailing the restrictions on employment of disciplined attorneys. This section states:

(1) When attorneys have been placed on inactive status, suspended, disbarred, or have surrendered their licenses, they are ineligible to practice law within this jurisdiction until readmitted or reinstated.

(2) While on suspension or inactive status, an attorney shall not be employed in any capacity whatsoever with a lawyer, law firm or lawyer professional association. Employment is construed as the provision of any services or labor for the benefit of the law practice of the employing lawyer or lawyers, whether compensated or not, and irrespective of the location where the services or labor may be performed.

Appendix A

> (3) An attorney who has been disbarred or has surrendered his or her law license may be employed by a lawyer, law firm or lawyer professional association to perform such services only as may be ethically performed by other lay persons employed in the law offices. Provided, however, that the following conditions apply:
>
> * * *
>
> (c) The employed former lawyer shall have no direct contact with any client or receive, disburse, or otherwise handle trust funds or property.

As indicated in Section 2(c), the Arkansas Supreme Court has granted authority to regulate the legal profession in Arkansas to the Committee, and the Court has put into effect specific rules for the discipline and monitoring of disciplined attorneys in the state. Some of these regulations, as noted, limit or terminate a person's privilege to practice law. Cambiano's challenge to the rules questions whether some of these rules are violative of the Constitution and whether they should be stricken.

Freedom of Speech and Association

In this appeal, Cambiano argues that an interim suspension under Section 7J violates his constitutional rights. Cambiano makes a three-part argument. First, he contends that his rights to free speech and association under the First Amendment are chilled under the rule because he is not allowed to work for or discuss legal matters with other

attorneys even though he has no contact with clients. Cambiano argues that while the Arkansas Supreme Court has "some rights" to regulate the conduct of suspended attorneys, this right is not unfettered, particularly in the area of speech. Cambiano argues that the rule does not only regulate his "commercial" speech, but also his political speech as he may want to express his political opinion in a legal framework.

In response, Neal first responds that the United States Supreme Court has determined that states have broad latitude to regulate professions in their boundaries, and that states could limit an attorney's First and Fourteenth Amendment rights in order to protect the public. The Procedures include the specific language that an attorney who is convicted of a felony will be suspended pending disbarment, and Section 7J was created to protect the public. Neal argues that the speech involved at issue is "commercial" speech in that it is speech that is made for a business purpose, and that the overbreadth doctrine does not apply to this type of speech. Section 7J does not prevent an attorney from making "political" speech; instead, it prevents an attorney from aiding a client, with or without compensation, which is "commercial" speech. Neal is correct on this point.

Generally, States have a strong interest and a right to regulate professions within their boundaries, and the States bear "a special responsibility for maintaining standards among members of the licensed professions." Ohralik v. Ohio State Bar Assn., 436 U.S. 447, 460, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978). In particular, the States's interests in regulating lawyers is "especially great since lawyers are essential to

the primary governmental function of administering justice, and have historically been 'officers of the courts.' " Id. (citing Goldfarb v. Virginia State Bar, 421 U.S. 773, 792, 95 S.Ct. 2004, 44 L.Ed.2d 572 (1975)). However, this right of regulation is not absolute; actions protected by the First Amendment continue to receive at least some level of protection "even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law." Gentile v. State Bar of Nevada, 501 U.S. 1030, 1054, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991).

In the realm of First Amendment speech, the Supreme Court has identified three types of speech, and has assigned varying levels of protection under the First Amendment for that speech. These three have been categorized as "pure speech," "not-so-pure speech," and "impure speech." Chester James Antieau, Modern Constitutional Law § 4.00 et seq. (2nd ed.1997, Supp.1999). At issue in this case is whether the speech proscribed by Section 7J is "political" speech, a form of "pure speech," affording the strictest protection under the First Amendment, or "commercial speech," a form of "not-so-pure speech," which only garners intermediate protection under the First Amendment. Cambiano argues that Section 7J could impair his right to "political speech" which is afforded the highest level of protection. Neal argues that Section 7J only proscribes "commercial speech," affording it lesser protection which is overcome here by the Committee's substantial interests in regulating the profession.

To determine the type of speech proscribed here, we must review both the language and effect of Section 7J of the Procedures. As noted, an attorney who is suspended is barred

from being employed by any lawyer or law firm in any capacity, for compensation or not, during the suspension. In Section 7J(2), "employment" is "construed as the provision of any services or labor for the benefit of the law practice of the employing lawyer or lawyers, whether compensated or not, and irrespective of the location where the services or labor may be performed." Section 7J(2). In other words, a suspended attorney may not provide any services to an attorney, for pay or not, at any location, if such services would benefit the law practice. While this provision seems rather broad at first glance, a plain reading of the section indicates that the section curtails commercial speech or an "expression related solely to the economic interests of the speaker and its audience." Virginia Pharmacy Board v. Virginia Citizens Consumer Council, 425 U.S. 748, 762, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976); Bates v. State Bar of Arizona, 433 U.S. 350, 363-364, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977); Friedman v. Rogers, 440 U.S. 1, 11, 99 S.Ct. 887, 59 L.Ed.2d 100 (1979). The Supreme Court's decisions have recognized "the 'commonsense' distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech." Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557, 562, 100 S.Ct. 2343, 65 L.Ed.2d 341 (1980).

As the Supreme Court stated in Ohralik:

> Expression concerning purely commercial transactions has come within the ambit of the Amendment's protection only recently. In rejecting the notion that such speech "is wholly

> outside the protection of the First Amendment," Virginia Pharmacy, supra, at 761, 96 S.Ct. 1817, we were careful not to hold "that it is wholly undifferentiable from other forms" of speech. 425 U.S. at 771 n. 24, 96 S.Ct. 1817. We have not discarded the "common-sense" distinction between speech proposing a commercial transaction, which occurs in an area traditionally subject to government regulation, and other varieties of speech. Ibid. To require a parity of constitutional protection for commercial and noncommercial speech alike could invite dilution, simply by a leveling process, of the force of the Amendment's guarantee with respect to the latter kind of speech. Rather than subject the First Amendment to such a devitalization, we instead have afforded commercial speech a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values, while allowing modes of regulation that might be impermissible in the realm of noncommercial expression.

Ohralik, 436 U.S. at 455-456, 98 S.Ct. 1912. In Ohralik, a case involving in-person solicitations of clients by an attorney in violation of the Ohio Bar's rules against such conduct, the Supreme Court noted that:

> A lawyer's procurement of remunerative employment is a subject only marginally affected with First Amendment concerns. It falls within the State's proper sphere of economic and

> professional regulation. (Citation omitted.) While entitled to some constitutional protection, appellant's conduct is subject to regulation in furtherance of important state interests.

Id., 436 U.S. at 459, 98 S.Ct. 1912.

Because the speech here is commercial speech, it is afforded only a "limited measure of First Amendment protection." Florida Bar v. Went For It, Inc., 515 U.S. 618, 623, 115 S.Ct. 2371, 132 L.Ed.2d 541 (1995). This limited measure of protection for "commercial speech" is in the form of "intermediate" scrutiny which is accomplished by following the four prongs set out in Central Hudson. These prongs include:

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Central Hudson, 447 U.S. at 566, 100 S.Ct. 2343.

We hold that Section 7J directly advances the important governmental interests of consumer protection and the

integrity of the legal system. Further we hold that it is no more restrictive than necessary and is thus constitutional. In Lawline v. American Bar Association, 956 F.2d 1378 (7th Cir.1992), the United States Court of Appeals for the Eleventh Circuit held that Illinois had the right to regulate the practice of law by forbidding attorneys from entering into partnerships with nonlawyers if any of the activities of the partnership consisted of the practice of law. The Eleventh Circuit Court of Appeals found that the State's interest in preventing incompetent legal assistance was adequate justification for the rule. The plaintiffs in Lawline asserted the same causes of action as those asserted by Cambiano. Regarding the freedom of speech challenge, the court determined that since the state had a legitimate interest to protect, "any abridgment of the right to free speech is merely the incidental effect of observing an otherwise legitimate regulation." Lawline, 956 F.2d at 1386. Furthermore, the Lawline court rejected the argument that the regulation at issue violated the plaintiffs's rights to freedom of association because no fundamental right was at issue to trigger the protection. Such is the case here, as there is no fundamental right to work as an attorney or at a law firm. The practice of law is a privilege to engage in commercial activity, not a right. As such, the freedom of association in the First Amendment does not apply.

Cambiano also asserts that Section 7J is overly broad in that it "bans Cambiano's core political protected speech." In essence, Cambiano argues that some legal issues on which he could give advice are actually political issues which are protected by a "strict scrutiny" review under the First Amendment. Because we have held the speech at issue to be

commercial speech, we also hold the overbreadth doctrine to be inapplicable. See Ohralik; Shapero v. Kentucky Bar Ass'n, 486 U.S. 466, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988). Furthermore, while the Supreme Court agrees that "political speech" is the core form of speech protected by the First Amendment, See Ohralik and Gentile, there is a difference between providing legal advice to a lawyer or client, and espousing political views on issues such as the death penalty.

Cambiano attempts to argue that providing legal advice on how to litigate a death-penalty case is "political speech." However, it is more accurately described as speech with a commercial purpose of representing a client. The rule does not restrict Cambiano from using available public forums to state positions opposing the death penalty. However, to provide specific legal advice to an attorney who is handling a death-penalty case would violate his suspension.

Due Process

Second, Cambiano argues that Section 7J violates the Fourteenth Amendment to the Constitution and Article 2, § 8 of the Arkansas Constitution in that it takes away his right to liberty and property without due process of law and it is void for vagueness. He argues that his liberty interests are the freedom of speech and association, and his property interest is his right to income by assisting other lawyers who practice law. He argues that Section 7J is vague in that does not define the terms "ethically performed" or "direct contact."

Regarding the liberty and property arguments, Cambiano offers no authority to support his contentions. We have often stated that we will not consider arguments made without authority. National Bank of Commerce v. Dow Chem. Co., 338 Ark. 752, 1 S.W.3d 443(1999); Dobie v. Rogers, 339 Ark. 242, 5 S.W.3d 30 (1999); Farm Bureau Policy Holders v. Farm Bureau Mut. Ins. Co., 335 Ark. 285, 984 S.W.2d 6 (1999).

Cambiano's argument is premised on the idea that once licensed, he was then conferred a "property right" to practice law. However, this court has stated again and again that "the practice of law is a privilege and not a right." See In re Petition Butcher, 322 Ark. 24, 907 S.W.2d 715 (1995); In re Petition for Reinstatement of Lee, 305 Ark. 196, 806 S.W.2d 382 (1991). As such, any protections to a law license are only subject to the very lowest of review under the Due Process and Equal Protections Clauses of the Constitution. Certainly, here, more than sufficient reasons exist to suspend Cambiano from the practice of law. He was convicted of a felony, and under this Court's Procedures, this constitutes grounds for automatic suspension pending an automatic referral for disbarment. As noted by Neal, the reasons to suspend Cambiano and prevent him from having any contact as an attorney with the public is substantial. Furthermore, the court's right to control the practice of law is, in and of itself, substantial reason to effectuate the suspension in this case.

Cambiano also argues that certain terms in Section 7J are void for vagueness under the Due Process Clause and should be invalidated. Specifically, he argues that the terms "ethically performed" and "direct contact" in the following provisions are unconstitutionally vague:

> (3) An attorney who has been disbarred or has surrendered his or her law license may be employed by a lawyer, law firm or lawyer professional association to perform such services only as may be ethically performed by other lay persons employed in the law offices. Provided, however, that the following conditions apply:
>
> * * *
>
> (c) The employed former lawyer shall have no direct contact with any client or receive, disburse, or otherwise handle trust funds or property. (Emphasis added.)

Section 7J(3) and (3)(c). As indicated in these two provisions, these definitions apply to a disbarred attorney, not a suspended attorney. Therefore, we consider this challenge a "pre-enforcement facial challenge" which involves a specific standard of review. In Craft v. City of Fort Smith, 335 Ark. 417, 984 S.W.2d 22 (1998), the court discussed the vagueness doctrine and stated:

> It is well settled that a law is unconstitutionally vague under due process standards if it does not give a person of ordinary intelligence fair notice of what is prohibited, and it is so vague and standardless that it allows for arbitrary and discriminatory enforcement. See Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972); Thompson v. Arkansas Social Serv., 282 Ark. 369, 669 S.W.2d 878

(1984); Davis v. Smith, 266 Ark. 112, 583 S.W.2d 37 (1979). When a person brings a "pre-enforcement facial challenge" to the vagueness of a law, the relevant inquiry is whether the ordinance is "impermissibly vague in all of its applications." Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) (emphasis added). Likewise, in Planned Parenthood of Minnesota v. State of Minnesota, 910 F.2d 479 (8th Cir.1990), the Eighth Circuit required those who brought a pre-enforcement facial challenge to a fetal disposal law to demonstrate that the "law is impermissibly vague in all of its applications" and that "the statute could never be applied in a valid manner." The subject matter of the challenged law also determines how stringently the vagueness test will be applied. For instance, if the challenged law infringes upon a fundamental right, such as liberty or free speech, a more stringent vagueness test is applied. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc. supra; Thompson v. Arkansas Social Serv., supra; Davis v. Smith, supra. In contrast, if the law merely regulates business activity, a less stringent analysis is applied and more flexibility is allowed. Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., supra; Thompson v. Arkansas Social Serv., supra; Davis v. Smith, supra.

Craft, 335 Ark. at 424, 984 S.W.2d 22. As a "pre-enforcement facial challenge," for Cambiano to prevail the terms at issue

in this case must be "impermissibly vague in all of its applications" and "could never be applied in a valid manner" in order to be deemed void for vagueness. We hold within the context of the Procedures that these terms are not impermissibly vague. The terms "ethically performed" and "direct contact" have solid basis in the Rule 5.3 "Responsibilities Regarding Nonlawyer Assistants" in the Model Rules of Professional Conduct and in applicable case law. A person of ordinary intelligence could find a workable framework for these terms under which his or her conduct could be adapted.

Equal Protection

Finally, Cambiano argues that Section 7J violates his right to equal protection under the Fourteenth Amendment and Article 2, §§ 3 and 18 of the Arkansas Constitution because the rule places prohibitions on suspended lawyers that are not placed on people who have no law license. He argues that because the rule impinges on fundamental rights, strict scrutiny instead of the rational basis test must be applied to the analysis of the rule. Finally, Cambiano argues that Section 7J violates his right to equal protection. However, as with his due process liberty and property arguments, he cites no authority supporting his contentions. Therefore, it will not be considered. See Nat'l Bank of Commerce, Farm Bureau, and Dobie, supra.

Affirmed.

APPENDIX B — ORDER OF THE CONWAY COUNTY CIRCUIT COURT DISMISSING COUNTERCLAIM AND MAKING ADDITIONAL FINDINGS UNDER RULE 54(b) ARCP DATED DECEMBER 28, 1999 AND FILED JANUARY 3, 2000

ORDER DISMISSING COUNTERCLAIM AND MAKING ADDITIONAL FINDINGS UNDER RULE 54(b) ARCP

On the 10th day of November, 1999, this matter came on to be heard for hearing at the Logan County Courthouse in Booneville before the Hon. John Holland, Circuit Judge on Assignment. All parties consented to the venue for this hearing, Logan County and Conway County both being in the Fifteenth Judicial District. Plaintiff Neal appeared through his attorney, Lynn Williams. The defendant appeared in proper person and with his attorney, Jeff Rosenzweig.

With regard to the counterclaim brought by Mr. Cambiano the parties agree, and the Court accepts their agreement, that Mr. Neal is the proper counterdefendant and that it is not necessary to make each member of the Committee a party defendant to the counterclaim.

The Court hereby treats the motion to dismiss the counterclaim under Rule 12 ARCP as a motion for summary judgment under Rule 56 ARCP. The Court hereby credits the testimony of Mark Cambiano and Joe Cambiano that, if the challenged Procedures were ruled unconstitutional, they would attempt to comply in all respects with the Model Rules of Professional Conduct and the other unchallenged Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law in Mark Cambiano's proposed association with the law practice of

Joe Cambiano. However, the Court finds that there is no material issue of fact to be decided and that the challenged Procedures are constitutional. The Court hereby dismisses Mr. Cambiano's counterclaim.

Furthermore, pursuant to Rule 54 (b) ARCP, the Court hereby determines that the dismissal of the counterclaim is a final judgment from which an appeal may be taken. The Court makes specific factual findings (i) that the counterclaim presents issues easily separable from those in the complaint, i.e. the rights of a suspended or disbarred lawyer as opposed to whether Mr. Cambiano should be disbarred, and (ii) that the counterclaim presents issues of importance to the legal profession which should be decided by the Supreme Court of Arkansas more speedily than it is likely that the issue of disbarment would be. The Court thus hereby finds that this Order should be considered as an entry of final judgment on the counterclaim from which an appeal may be taken immediately.

IT IS SO ORDERED.

s/ John M. Holland
CIRCUIT JUDGE ON
ASSIGNMENT